IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 393 OF 2002

IN

SUIT NO. 203 OF 2002

ICICI Ltd
(Debenture Trustees) .....**Plffs.**
vs.
Serene Industries Ltd and ors. .....**Defnds.**

NOTICE OF MOTION NO. 525 OF 2002
IN
SUIT NO. 203 OF 2002

ICICI Ltd
.....**Plffs.**
vs.
Serene Industries Ltd and ors. .....**Defnds.**

Simil Purohit a/w. Arun Siwachi i/b. Amarchand and Mangaldas and S.S. Shroff and Co. for the plffs.

Hiralal Thakkar a/w. M.K. Nesari for defendant no.1.

Lucky Indorkar i/b. S.H. Satpute and Co. for defendant no.2.

CORAM: S.U. KAMDAR, J.

DATE : 30th September, 2005.

P.C. :.

1. The present notice of motion has been taken out for appointment of the Court Receiver, High Court, Bombay inrespect of the immovable properties described in Ex.A to the plaint and the movable properties described in Ex.B as also the current assets which are in Ex.C including the power to sale by public auction or by private treaty. By prayer (b) an injunction is also sought inrespect of the aforesaid prayers. The defendant has also taken out Notice of Motion No. 525 of 2002. By the said motion the defendants are seeking rejection of the plaint on the ground set out under O. 7 R.11 of the CPC and/or analogous thereof. The defence raised in the Notice of Motion no. 393 of 2002 and the grounds raised insupport of the motion No. 525 of 2002 are identical. The defences raised by the defendants are as under :

2. Firstly it has been contended that the suit is barred by the law of limitation. The suit is based

on a mortgage which is Ex.D to the plaint. As far as the suit for the enforcement of the mortgage is concerned the limitation period prescribed under Article 62 of the Limitation Act is of a 12 years. The mortgage is of 25.9.1995. The cause of action for the purpose of recovery of amount would arise only on the defendant making default in repayment of the amount covered by the Indenture of mortgage for redeemable convertible debentures as provided in Clause 3 of the schedule to the said debenture deed. Under the said clause 3 the debentures were to be redeemed sometime in or about 1997. The suit is lodged in this court on 11.1.2002. In view thereof the question of the suit being barred by the law of limitation does not arise. Secondly even if the period of limitation is counted as three years then also the suit is within time because under sub-section 5 of section 22 the period which has been taken for the BIFR proceedings is required to be excluded. The BIFR proceedings in the present case commenced in October, 1998 and thereafter culminated on 6.6.2000. Thereafter a fresh reference is filed on

10.7.2002. However the plaintiff has obtained permission under S.22 to continue the present proceedings. If the said period is taken into account then in that event up to October 1998 there will be 10 months and from June 2000 to January, 2002 there will be another one year and seven months. Thus the suit is filed within time. Thus even on that computation the suit is within time. This is also a ground taken insupport of the application in Notice of No. 525 of 2002. In that view of the aforesaid facts I do not find therein any substance and thus I reject the same.

3. The next contention raised is that the mortgage deed which is Ex.D is not registered. Learned counsel for the plaintiff has produced before me the receipt of lodging receipt indicates that the mortgage deed was lodged registration before the Sub-Registrar of Assurances sometime in or about 1995,. He has also produce the necessary charge registration in the Form 13 and Form 10 which is also filed on 29.9.1995 before the Company Registrar also. All these documents indicate that

the defendants themselves filed documents for registering the charge. Inresepect of the aforesaid a false plea has been raised by the defendant that the said mortgage deed is not registered. I am of the opinon that such a false contention ought not to be accepted and therefore the said defence raised is without any merits and accordingly I reject the same.

4. The third and the last contention raised that the plaintiffs could not have acted as debenture trustees in view of the provisions of Section 13(a) of the Security and exchange Board of India Act, 1992. However the learned counsel for the plaintiff has drawn my attention that the reliance placed on S.13(a) has been inserted only from 4.7.2003. The said section 13(a) in proviso provides that the said rule will not be applicable inrespect of the debentures issued prior to the commencing of the Companies (Amendment) Act, 2000. Admittedly in the present case the debentures are issued in 1995. However the learned counsel for the defendant contends that there is a violation of

the provisions of the rule as existed in 2000 because it required a permission to be obtained to continue to act as a trustee. I do not find any substance in the said contention.

5. In my view in the present case by virtue of amendment of 2003 the rights of the plaintiffs inrespect of the debenture trust deed to act as a trustee has been protected if the debentures are issued prior to Company (Amendment) Act, 2000. In that view of the matter I do not find any merits in the said contention also. These are the contentions also in support of the motion no. 525 of 2002. In view of the aforesaid I dismiss Notice of Motion no. 525 of 2002.

6. In so far as Notice of Motion no. 393 of 2002 is concerned, I pass the following order :

(i) Court Receiver to stand appointed as receiver inrespect of the suit property. The receiver not to dispossess any persons found in possession but appoint him as his agent on

the usual terms and conditions of royalty but without security.

(ii) In any event if the defendants are found in possession and not inclined to continue as agent of the court Receiver. The Court Receiver is permitted to make a report to the court for further appropriate directions either for sale of the assets or to appoint outsider as an agent of the Court Receiver. Till the receiver takes possession there shall be interim order and injunction restraining the defendants from alienating, encumbering or creating any third party rights inrespect of the suit property.

(iii) Both the motions disposed off accordingly.

sd/-

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